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In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 556

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation, and SEABOARD AIR LINE RAILROAD COMPANY, a corporation,

Petitioners,

vs.

FLORIDA EAST COAST RAILWAY COMPANY, a corporation,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION

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Clarification of grounds on which petitioners invoke this Court's jurisdiction

Undertaking to state the grounds on which they invoke this Court's jurisdiction, petitioners Coast Line and Seaboard*

*The railroads who were parties to the litigation in the district court and the court of appeals are Florida East Coast Railroad Company ("FEC"), Atlantic Coast Line Railroad Company ("Coast Line"), Seaboard Air Line Railroad Company ("Seaboard"), Southern Railway Company ("Southern"), Georgia Southern and Florida Railway Company ("GS&F"), and Jacksonville Terminal Company ("Terminal Company"). Although Terminal Company appealed from the district court's decision to the court of appeals, it has not joined in the petition for certiorari. Although Southern and GS&F briefed and argued the case in the court of appeals, supporting the position taken by respondent FEC, they are not named in the petition as parties respondent and they evidently have not been served with a copy of the petition.

characterize the district court's decision, which was affirmed by the decision of which review is sought, as requiring certain action of Coast Line and Seaboard "contrary to the statutory law of Florida and without a prior determination of the effect of such action upon the public interest" (petition, p. 3). The recognizable ground for invoking the jurisdiction of this Court is that which is repeated more specifically elsewhere in the petition:

> "The Court of Appeals has decided an important State question in a way in conflict with applicable State law."
>
> Petition, p. 6

Additional statutes involved

The federal statutes involved include, as petitioners have said (petition, pp. 3, 19a-22a), Section 5(2) of the Interstate Commerce Act [49 U.S.C. §5(2)]. Also involved is Section 5(4) [49 U.S.C. §5(4)], which provides in relevant part:

> "It shall be unlawful for any person, except as provided in paragraph (2) of this section, to enter into any transaction within the scope of subdivision (a) of paragraph (2) of this section, or to accomplish or effectuate, or to participate in accomplishing or effectuating, the control or management in a common interest of any two or more carriers, however such result is attained, whether directly or indirectly, by use of common directors, officers, or stockholders, a holding or investment company or companies, a voting trust or trusts, or in any other manner whatsoever. . . . As used in this paragraph and paragraph (5) of this section, the words 'control or management' shall be construed to include the power to exercise control or management."
>
> 49 U.S.C. §5(4)

Clarification of question presented

The only substantial question answered and presented for possible review by the decision of the court of appeals is:

Did the district court correctly enforce the Operating and Guaranty Agreement as written?

Statement of the case

Pursuant to an Operating and Guaranty Agreement dated as of December 1, 1947 (R. 21); FEC, Coast Line, Seaboard, Southern and GS&F, all common carriers engaged in transporting passengers and property by railroad in commerce (49 U.S.C. §1 *et seq.*), control and manage in their common interest yet another carrier, Jacksonville Terminal Company. The Interstate Commerce Commission authorized the contracting carriers to enter the Agreement as part of a transaction, otherwise forbidden by Section 5(4) of the Commerce Act, which was found by the Commission to be "consistent with the public interest" [49 U.S.C. §5(2)].

The district court correctly found (petition, p. 5a) that the Operating and Guaranty Agreement in numerous ways assures that Terminal Company and its terminal facilities "should operate and be governed responsively to the common interest of the Railway Companies [the five controlling carriers named above] and not responsively to the interests of less than all of them." Consistently with that purpose, the Agreement was made to provide, in Article Twenty-First, that Terminal Company's president and general manager and other officers subject to election by its directors "shall be appointed and serve only by unanimous consent" of FEC, Coast Line, Seaboard and Southern and that, "any provision of the by-laws of the Terminal Company to the contrary notwithstanding," any

such officer and any subordinate official of Terminal Company shall be dismissed on written request of any one of the controlling carriers (Article Twenty-First, petition, p. 23a).

On February 28, 1963, FEC gave appropriate written notice that it no longer consented to the services of M. C. Jennette as president and general manager and of Elliott Adams as general counsel of Terminal Company and requested their immediate dismissal (R. 67). Coast Line and Seaboard and the directors of Terminal Company serving at the instance of Coast Line and Seaboard took the position that Article Twenty-First could not be effectuated in such a way as to remove Messrs. Jennette and Adams from their respective positions until their successors had been chosen and had qualified (R. 249, 256).

FEC brought this action in the district court praying that the court order Coast Line and Seaboard to join FEC and Southern (which has supported and still supports FEC in this controversy) in effectuating the immediate dismissal of Messers. Jennette and Adams in compliance with Article Twenty-First (R. 20). FEC alleged in its complaint that the action arises under Title 28, U.S.C., § 1337, and the Interstate Commerce Act, Title 49, U.S.C., § 1 *et.seq.* (R. 13). The district court dismissed the action for lack of jurisdiction but its judgment was reversed by the court of appeals for the fifth circuit, which held on authority of this Court's decision in *International Ass'n of Machinists, AFL-CIO v. Central Airlines, Inc.* (1963), 372 U.S. 682, that a federal court applying federal law has jurisdiction to and should construe and enforce the federally-validated Agreement effecting the control of Terminal Company in a common interest with the contracting carriers. *Florida East Coast Ry. Co. v. Jacksonville Terminal Co.* (5th Cir. 1964), 328 F.2d 720. This Court denied certiorari. 379 U.S. 830.

On remand, the district court heard the merits and entered judgment directing Coast Line, Seaboard and Terminal Company to join in effecting a prompt termination of the services of Messrs. Jennette and Adams (R. 155). On appeal by Coast Line, Seaboard and Terminal Company, the court of appeals affirmed, rendering the decision petitioners seek to have reviewed by this Court.

Argument

I.

The court of appeals did not decide any State question, much less an important one

Petitioners assert that the Court should review this case because the question presented is "an important State question" which the court of appeals has decided "in a way in conflict with applicable State law" (petition, p. 6).

The somewhat vaguely stated "Question Presented" by the petition (p. 3) is not a "State question" at all, and so it is certainly not "an important State question." Rule 19, subs, 1(b), Supreme Court Rules. It is true that petitioners pressed upon the courts below a question involving the interpretation of Florida statutes providing that "incumbent" corporate officers hold over and continue to serve until the qualification of their successors. Upon these statutes petitioners predicated their position that "they cannot perform the contract literally as written because of peculiarities of Florida state law" (opinion of court of appeals on jurisdiction, 328 F. 2d at 722) and that "had the by-laws of the Terminal Company expressly provided what Art. 21 requires, the by-laws would have been illegal under Florida law" (opinion of the court of appeals on the merits, petition, p. 12a).

But the court of appeals clearly regarded as inapposite the question of State statutory construction urged on it by petitioners. The court stated in its opinion that "we would have, first, a great deal of doubt" that, as a matter of State law, the statutes could properly be interpreted and applied with the effect contended for by petitioners. Then the court stated:

> "But we think that on matters having such direct relationship to the effective operation of an important instrumentality of interstate commerce, federal, not state, standards must control. *International Ass'n of Machinists v. Central Airlines, Inc.*, 1963, 372 U.S. 682, 83 S.Ct. 956, 10 L.Ed.2d 67; *Textile Workers Union v. Lincoln Mills*, 1957, 353 U.S. 448, 77 S.Ct. 912, 1 L.Ed.2d 972. . . .
>
> "Approached then as a matter of Federal law, we have no doubt that the contract says what it means, means what it says, and that the law should give effect to it."
>
> Opinion, petition pp. 12a - 13a.

The decision of the court of appeals to apply federal law, not State law however otherwise pertinent, was not and could not have been a decision on "an important State question." Neither was the consequent decision, that "as a matter of Federal law" the Agreement must be enforced as written, a decision on "an important State question." In both respects the decision below was held to be governed by federal law, and properly so. *International Ass'n of Machinists, AFL-CIO v. Central Airlines, Inc.* (1963), 372 U.S. 682.

In such a controversy as this, in which there is a real or imagined question as to the integrity of a federally-validated contract which expresses federal policy in an area of federal

concern, it is largely to avoid misapplication of local law by State courts that federal courts can and do exercise jurisdiction. In *Central Airlines*, this Court, speaking of a contract similarly predicated on federal statutory authority [in language found by the court below to be "apposite here" (opinion on jurisdiction, 328 F.2d at 722)], held:

> "If these contracts are to serve this function under § 204 [45 U.S.C. § 184], their validity, interpretation, and enforceability cannot be left to the laws of the many States, for it would be fatal to the goals of the Act if a contractual provision contrary to the federal command were nevertheless enforced under state law or if a contract were struck down though in furtherance of the federal scheme."
>
> 372 U.S. at 691

It is the sound doctrine of *Central Airlines* that federal law must determine at the outset whether the latent question of State law is ever reached:

> "It is federal law which would determine whether a § 204 contract is valid and enforceable according to its terms."
>
> 372 U.S. at 691

In its decision in this case, the court of appeals doubted petitioners' claims respecting the meaning of Florida Statutes 608.40 and 608.51 but, giving petitioners' assertions full credence for the purpose of decision, held "as a matter of Federal law" that they could not avail against "the overriding policies of Congress" as effectuated by the plain words of the Agreement.

While petitioners rely on this Court's decision in *Wallis v. Pan American Petroleum Corporation* (1966), ... U.S. ....., 86 S.Ct. 1301, 16 L.Ed.2d 369 (petition, p. 7 *et seq.*), they

do not assert as a ground for the exercise of this Court's jurisdiction that the court below decided a federal question in a way in conflict with *Wallis*.* Neither could such an assertion reasonably be made.

* In *Wallis*, the district court sat in a diversity case as "only another court of the State" of Louisiana [*Guaranty Trust Co. of New York v. York* (1945), 326 U.S. 99, 108] and considered substantive questions to which the Louisiana State court would presumably have applied Louisiana law. The issue before this Court was whether the district court should have applied the pertinent Louisiana law or, to alleviate a "significant conflict between some federal policy or interest and the use of state law" (*Wallis*, 86 S.Ct. 1301, 1304), should have displaced the State law by the application of federal statutory and common law. Finding "no significant threat to any identifiable federal policy or interest" (*Wallis*, 86 S.Ct. 1301, 1304), this Court held that Louisiana law should govern.

That *Wallis* decided no "important State question" is enough reason for the denial of certiorari on the jurisdictional grounds urged by the petitioners in this case. But, lest it be thought that the federal law enunciated by *Wallis* should have required a different decision by the court of appeals in this case, we add that *Wallis* simply applied to yet another federal court diversity case the familiar doctrine of *Erie R. Co. v. Tompkins* (1938), 304 U.S. 64. This case is different from *Wallis* in that it arose under Acts of Congress regulating commerce. 28 U.S.C. § 1337; *Florida East Coast Ry. Co. v. Jacksonville Terminal Co.* (5th Cir. 1964), 328 F.2d 720, *cert. den.*, 379 U.S. 830; and *cf. International Ass'n of Machinists, AFL-CIO v. Central Airlines, Inc.* (1963), 372 U.S. 682. The *Erie* doc-

*Certainly petitioners cannot contend that the court below decided "an important State question in a way in conflict with applicable [Florida] State law" established by *Wallis*. *Wallis* established no "State law" and was not remotely concerned with Florida law.

trine has never been extended by decisions of this Court to such cases. *United States v. Standard Oil of Calif.* (1947), 332 U.S. 301, 307; see also *Hanna v. Plumer* (1965), 380 U.S. 460, 465.

This case would not be an appropriate vehicle for a consideration of extending *Erie* into § 1337 cases, for demonstrably any Florida statutes having the meaning contended for them by petitioners in the courts below would give way in this case to "[federal] judicial standards to effectuate the overriding policies of Congress" (opinion, petition, p. 13a). Petitioners would have the Court apply the Florida "holdover" doctrine in such a way so as to perpetuate in office a Terminal Company official who has effectively been discharged pursuant to the federally-validated Agreement which is binding on Terminal Company and on the five controlling carriers. To so hold would emasculate the carefully balanced plan of the Agreement, which in so many ways (opinion of district court, petition, p. 5a) assures that only "unamious consent" of the controlling carriers shall be effective to govern Terminal Company.* There is an "identifiable federal policy or interest" (*Wallis*, 86 S.Ct. 1301, 1304) in preventing such a miscarriage and in having the Agreement effectuated according to its terms, which were approved by the Interstate Commerce Commission pursuant to the plan of Congress. 49

*Seeking to accommodate their argument to the test prescribed by *Wallis* for diversity cases, petitioners have seemingly abandoned their contentions in the court below that Article Twenty-First is inconsistent with and must yield to the Florida Statutes [see the opinions of the court of appeals on jurisdiction (328 F.2d at 722) and on the merits (petition, p. 12a), quoted *supra* pp. 7-8]. Petitioners argue now that "the agreement is silent" as to when a dismissal under Article Twenty-First should be effectuated, so that there is no conflict between the Agreement and the statutes (petition, p. 6). But, there is an irreconcilable inconsistency between the Agreement and the statutes if, as petitioners insist, the statutes would, notwithstanding the objections of FEC and Southern, perpetuate in office those whom the Agreement says may not serve except by "unanimous consent" and who shall "be dismissed upon the written request of any one" of the controlling carriers.

U.S.C. §§ 5(2), (4). *Florida East Coast Ry. Co. v. Jacksonville* Terminal Co. (5th Cir. 1964), 328 F.2d 720, *cert. den.*, 379 U.S. 830; *International Ass'n of Machinists, AFL-CIO v. Central Airlines, Inc.* (1963), 372 U.S. 682. That policy and interest would necessarily override inconsistent State law in any event.

II.

The decision of the courts of appeals is not in conflict with State law

The decision of which review is sought did not decide a State question and could not have done so in a way in conflict with State law. The court of appeals found it unnecessary to determine whether, as claimed by petitioners, the proper application of Florida Statutes 608.40 and 608.51 would result in perpetuating Messrs. Jennette and Adams in their respective offices until the five controlling carriers reached unanimous agreement upon selection of their successors. But surely the district court's decision is not inconsistent with a proper interpretation of the statutes relied on by petitioners.

The Florida Statutes relied on by petitioners cannot reasonably be construed so as to continue in office a person who has been discharged from that office. Florida Statute 608.40, entitled "Officers; selection, terms, etc.," states in effect that the "terms" of officers shall be as stated in the corporation's charter and by-laws and thereafter "until their successors are chosen and qualify." The statute does not suggest that, when such a "term" is terminated by death, resignation or removal, there is a statutory "hold-over" beyond the term. Similarly, the principal purpose of F. S. 608.51 is to assure that corporate dissolution should not occur by reason of a failure to

elect officers and directors on the designated day. The statute provides that only "incumbents" hold over in an office until their successors are qualified. Obviously, an officer who has been removed or dismissed is not an incumbent who holds over in office under this statute.

The Florida Statutes cannot reasonably be interpreted in such a way as to vary Coast Line's and Seaboard's obligations under the Agreement respecting Terminal Company, which "is and should be regarded as the instrumentality of the stockholding Railway Companies as far as their relations inter se are concerned" (opinion of the district court, petition, p. 6a). See also opinion of the court of appeals, petition, p. 14a and cases therein cited.

While we do not appreciate the relevance of petitioners' suggestion that "the dismissal of the operating officials" of Terminal Company may be adverse to "the public interest" (petition, p. 5; and see also pp. 3, 6), it should be said that Mr. Jennette, the president and general manager, is the only "operating official" affected by this litigation; that the by-laws provide for the exercise of the president's duties by a vice-president in the absence of the president; and that Terminal Company had two vice-presidents at the time Mr. Jennette's dismissal should have been effected (R. 148).

Conclusion

The court of appeals has not in this case "decided an important state . . . . question in a way in conflict with applicable state . . . law." Rule 19, subs. 1(b), Supreme Court Rules. The petition for certiorari should be denied.

Respectfully submitted,

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